

still necessary that let the marketplace, and not arbitrary cost allocation rules, drive the deployment of broadband services.

**B. Unbundling and Resale Requirements Under Section 251 Create Disincentives for Incumbent Local Exchange Carriers to Deploy Advanced Infrastructure**

NLC does not propose that the Commission provide incentives for deployment of any particular technology -- fiber based or otherwise -- but rather that the Commission clarify that advanced infrastructures, in whatever form, be free from Section 251 unbundling requirements as requested by US WEST.<sup>5/</sup> As explained by US WEST, the costs of deploying such advanced infrastructures are large, and there are significant risks involved.<sup>6/</sup> Reasonable and fair compensation for undertaking these risks can only be realized when the services are deregulated.

In fact, the current unbundling requirements actually provide a disincentive for an incumbent to invest in advanced infrastructure. For example, when a local exchange carrier ("LEC") uses NLC's equipment to provide xDSL services, the LEC will purchase modems to place on either end of the subscriber loop. These modems allow the subscriber to obtain xDSL services using much of the current embedded network. The Commission should not require that a LEC unbundle such equipment under section 251. Any company serving that subscriber can place the same or similar electronics at the end of the loop. If the

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<sup>5/</sup> US WEST Petition, pp. 44-48.

<sup>6/</sup> US WEST Petition, pp. 46-47.

Commission requires that equipment such as the NLC modems be unbundled, no incumbent LEC will invest in the equipment, as competitors, with no investment risk at all, will be allowed to avail themselves of the technology. The result will be that consumers will be denied advanced services unless and until a competing LEC provides those services, because the regulatory regime under section 251 acts as a disincentive for the incumbent LEC to make substantial investments in its broadband infrastructure.

Additionally, the current regulatory framework, where the prices a carrier charges to its customers and its competitors (for resale or unbundling) are strictly limited, allows competitors to take advantage of an incumbent's investment with no risk of its own, and provides little incentive for companies ubiquitously to deploy advanced infrastructures. The Commission should use a paradigm, outside of the current regulatory framework, that will encourage the deployment of advanced infrastructures, so that eventually all Americans will be able to enjoy the benefits of advanced telecommunications services. In this manner, the Congressional intent of Section 706 will be fulfilled.

**C. The Existing InterLATA Backbone for the Internet Cannot Meet Existing or Future Bandwidth Demands**

As discussed in the US WEST Petition,<sup>21</sup> the Internet's backbone cannot support the present demand for bandwidth, especially in rural America, much less the future demands of an economy which may very well be based substantially on electronic commerce. US WEST, however, is foreclosed from meeting this important need because of present limits on

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<sup>21</sup> US WEST Petition, pp. 8-24.

its allowable services and facilities. NLC believes that the Commission should quickly permit US WEST to provide high-speed broadband services without regard to present LATA boundaries in order to fill this critical void.

#### **D. Other Regulatory Barriers**

It is likely that it will be years before a full featured ADSL standard can be developed.<sup>8/</sup> An ADSL standard is in the interest of manufacturers, network operators, and consumers, and there is little doubt that in the long term standards for both ADSL and other higher data rate DSL transmission systems will be adopted. In the interim, however, it will be necessary for network operators to roll out technologies from vendors which may be based on an emerging standard, but which contain substantial amounts of proprietary technology. Thus, in addition to the regulatory relief requested by US WEST under Section 706 of the 1996 Act, the Commission should grant regulatory relief that will allow xDSL deployment to occur prior to the development of full-featured, non-proprietary standards. Such interim relief will allow the rapid deployment of xDSL deployment that can support high penetration rates.

In addition, the present rules for CPE were developed in the context of and revolve around the definition of the analog POTS interface as reflected in Part 68 of the

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<sup>8/</sup> Efforts by the newly-formed Universal ADSL Working Group (UAWG) may eventually, in conjunction with other standardization efforts, result in a widely-deployed ADSL standard. Such a standard, however, will take a number of years to develop. By way of comparison, NLC notes that it took over four years for the MPEG-2 standard, a great success from a technical and business perspective, to evolve from a "frozen technical standard" to a licensing package.

Commission's Rules as well as the "unbundling requirement" of Section 64.702(e) of the Commission's Rules. These rules have worked well for consumers with respect to analog telephone services and low-speed modem services over analog lines, but are problematic when applied to the DSL technologies.

The *Computer II* and *Computer III* proceedings attempted neatly to divide the network and terminal interface from the customer's premises wiring and equipment, and also developed the concept of Network Channel Terminating Equipment ("NCTE"). Although the Commission has declared NCTE to be CPE and has narrowed the "multiplexer exception"<sup>9/</sup> and the availability of waivers from the unbundling requirement, the Commission also recognized that this approach might not be suitable as the migration to more digital platforms took place.<sup>10/</sup> NLC believes that this latter prediction of the Commission has proven to be quite accurate.

NLC believes that regulatory relief to encourage the deployment of xDSL technologies will involve a modification of the CPE rules, which will result in the removal of the artificial distinction between CPE and network equipment based solely on location of the piece of equipment. NLC notes that the deployment of cable modems is not inhibited by distinctions based on location,<sup>11/</sup> and believes that a similar approach should be applied for

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<sup>9/</sup> See *Computer III, Phase II Reconsideration*, 3 FCC Rcd 1150, (1988) at ¶ 138; *Computer III Supplemental Notice*, 104 FCC 2d 958 (1986) at ¶¶ 322-325 (1986); and *Computer III Remand Hearings*, 5 FCC Rcd 7719 (1990) at ¶ 21.

<sup>10/</sup> See *Computer III, Notice of Proposed Rulemaking*, 1985 FCC LEXIS 2770, at paras. 149-152 (1985).

<sup>11/</sup> Cable modems have been deployed under Title VI with no CPE unbundling or network disclosure requirements.

xDSL equipment. Consumers should have the option of leasing xDSL modems unbundled from service offerings as part of the service, as well as the ability to purchase such equipment, particularly during the initial years of deployment when the network interfaces are evolving. Thus, waivers from Section 64.702(e)'s unbundling requirement should freely be made available for xDSL deployments, and regulatory forbearance from the unbundling rule for broadband network equipment in the customer premises should be implemented, when such equipment presents one or more standard interfaces and is commercially available. Retention of the current requirements would otherwise frustrate the deployment of these advanced communications technologies.

Finally, NLC believes that the Commission should clarify that the voluntary participation of manufacturers in standards bodies meets network disclosure requirements. When manufacturers participate in standards bodies they agree to licensing on a fair and non-discriminatory basis, and ultimately to transfer technology to licensees to enable incorporation of the network interface technology in a variety of new broadband CPE. Thus, the purposes of network disclosure obligations are met in this manner, without compromising proprietary technology as would occur under the present network disclosure requirements.

#### **IV. Granting the Relief Requested in the Petition Should be Considered a Beginning, Not an End**

For all the reasons stated above, the Commission should grant the relief requested. The Commission should not stop there, however. Granting US WEST's petition will allow near-term deployment of broadband services. The goals of Section 706 will not be truly

fulfilled until the Commission creates long-term incentives for advanced infrastructure deployment. As mentioned above, pricing, unbundling, resale, and network disclosure are among the issues which must be resolved on a going-forward basis to encourage long-term technology-neutral broadband deployment. Without a comprehensive solution, advanced services will be deployed piecemeal. While that situation may be preferable to the current situation (where advanced deployment is stifled by the regulatory regime), the Commission needs to consider moving toward a considerably less-regulated environment which will allow broadband deployment to all Americans, as contemplated by Section 706.

**V. The Commission Must Act in an Expedient Manner on the US WEST Petition.**

The global growth of new data services, and in particular the growth of the Internet, will not be entirely stifled by regulatory action or inaction by the Commission. What may be stifled by inaction is the growth of high bandwidth residential connections in the United States. Businesses and private networks will utilize high cost connections to connect to the Internet since such connections will simply be a "cost of doing business" in an Internet-based economy, but residential subscribers will be forced to wait for the "bandwidth revolution." Delay in the deployment of broadband connections to residences will have a negative impact on the growth of many sectors of the U.S. economy including personal computer sales and development of new Internet-based services for consumers. Moreover, given the growth of telecommuting, the lack of broadband capacity will constrict applications in addition to traditional residential applications.

The Commission's track record for rapid decisions in the areas of computers and communications is not good.<sup>12/</sup> Although cautious study in this area has been justified in the past, NLC believes that the Commission must act quickly to determine whether or not the US WEST petition can be granted. A prompt decision will either allow the rapid deployment of these new services to meet the customer demand for bandwidth, or allow US WEST to determine an alternate regulatory strategy.

## **VI. Conclusion**

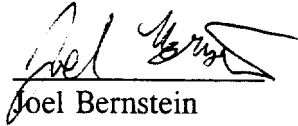
US WEST's petition raises legitimate concerns that the Commission should address in order to begin fulfilling the Congressional mandate of Section 706. Under the current regulatory regime, there has been very little investment in advanced broadband infrastructures. By eliminating unnecessary regulatory impediments, the Commission will further the public interest by supporting ubiquitous availability of advanced communications services. NLC strongly encourages the Commission to: 1) eliminate cost allocation impediments to efficient pricing of advanced broadband services; 2) not apply existing unbundling and resale requirements to the equipment used to provide broadband services; 3) grant US WEST's request for interLATA relief; 4) revise existing CPE rules to give network operators and consumers greater flexibility with regard to the deployment of broadband equipment in the home; and 5) address US WEST's petition expeditiously. For the foregoing

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<sup>12/</sup> For example, it took the Commission several years to complete its consideration in the Computer II and Computer III proceedings.

reasons, NLC supports US WEST's petition and urges the Commission to grant the relief requested in US WEST's petition and herein.

Sincerely,



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